



**DEPARTMENT OF
FINANCE**
OFFICE OF THE DIRECTOR

GAVIN NEWSOM - GOVERNOR
STATE CAPITOL ■ ROOM 1145 ■ SACRAMENTO CA ■ 95814-4998 ■ WWW.DOF.CA.GOV

May 17, 2019

Mr. David Bilby, Assistant Director of Development
City of Chula Vista
276 Fourth Avenue
Chula Vista, CA 91910

Dear Mr. Bilby:

Subject: 2019-20 Annual Recognized Obligation Payment Schedule

This letter supersedes the California Department of Finance's (Finance) Recognized Obligation Payment Schedule (ROPS) letter dated April 9, 2019. Pursuant to Health and Safety Code (HSC) section 34177 (o) (1), the Chula Vista Successor Agency (Agency) submitted an annual ROPS for the period July 1, 2019 through June 30, 2020 (ROPS 19-20) to Finance on January 18, 2019. The Agency requested a Meet and Confer on one or more of the determinations made by Finance. The Meet and Confer was held on April 24, 2019.

Based on a review of additional information and documentation provided to Finance during the Meet and Confer process, Finance has completed its review of the specific determinations being disputed:

- Item Nos. 6, 7, and 9 – Various Reimbursement Agreements (Agreements) with the City of Chula Vista (City) in the total outstanding amount of \$13,276,842. Finance originally denied these items as enforceable because (1) the Agreements did not meet the exchange of moneys or include repayment schedules as required under HSC section 34191.4 (b) (2) (A), and (2) the Agreements did not meet the requirements set forth in HSC section 34171 (d) (2) as agreements entered into at the time of the issuance of bonded indebtedness and solely for the purpose of securing or repaying those indebtedness obligations. Finance continues to deny these items as enforceable obligations as outlined below:

HSC section 34191.4 (b) (2) (A)

Pursuant to HSC section 34191.4 (b), loan agreements between the former Redevelopment Agency (RDA) and sponsoring entity may be placed on the ROPS for Finance review if the following requirements are met: (1) the Agency has received a Finding of Completion; and (2) the Agency has an approved Oversight Board (OB) action approving the loan as an enforceable obligation by finding the loan was for legitimate redevelopment purposes.

During the Meet and Confer, the Agency contends Item Nos. 6 and 7 meet the requirements because the Oversight Board (OB) made the finding that the loans were made for legitimate redevelopment purposes and the loan agreement entailed the transfer of money to the former RDA for a lawful purpose and obligated the RDA to repay the funds received. The Agency received a Finding of Completion on May 7, 2013.

However, OB Resolution No. 2017-001, which made the finding that agreements entered into prior to December 31, 2010 for the purpose of securing or repaying indebtedness obligations were for legitimate redevelopment purposes, was denied in our determination letter dated February 7, 2017. In order to qualify under HSC section 34191.4 (b) (2) (A),

there needs to be *an exchange of money from the City to the RDA; and where the RDA was obligated to repay the City in accordance to a required repayment schedule*. The Agreements in question did not involve an exchange of money from the City to the RDA. Rather, the Agreements are reimbursement contracts and do not meet the definition of a loan agreement under HSC section 34191.4 (b) (2) (A).

The reimbursement mechanism is further supported by the Agency's assertion and supporting documentation that the City made payments to the securities market on behalf of the Agency. Payments made by the City on behalf of the Agency lack the required exchange of cash from the City to the Agency, therefore leaving no obligation to repay the City for funds the Agency did not receive.

HSC section 34171 (d) (2)

Finance noted these Agreements have been previously denied and were the subject of a Meet and Confer during the ROPS 18-19 period. During that Meet and Confer, Finance evaluated whether the Agreements would qualify as an enforceable obligation under HSC section 34171 (d) (2). More specifically, whether the Agreements were entered into at the time of issuance of indebtedness and solely for the purpose of securing or repaying the indebtedness. In our May 17, 2018 ROPS 18-19 Meet and Confer determination letter, Finance approved funding for Item Nos. 6 and 7, but denied funding for Item No. 9.

Subsequent to May 17, 2018, the Agency requested further review of Item No. 9. On September 26, 2018, Finance further explained to the Agency through e-mail that Item No. 9 does not meet the definition of an enforceable obligation under dissolution law. The analysis in this ROPS review of Item No. 9 is the same as explained in the September 26, 2018 email. Specifically, a contract can meet the exception in HSC section 34171(d) (2) if the agreement in question was entered into at the time of issuance and is solely for the security or repayment of the indebtedness. Item No. 9 is a 1993 Reimbursement Agreement related to 1993 Certificates of Participation (COPs) which are no longer outstanding. Instead, the Agency is seeking payment for this agreement for payment of 2003 COPs. Since the 1993 Reimbursement Agreement was not executed at the time of the 2003 COPs, the agreement does not fit the exception in HSC section 34171(d) (2) and is not an enforceable obligation.

During the Meet and Confer, the Agency contends the 2003 Refunding COPs did not repay the City the amounts owed by the RDA pursuant to the 1993 Reimbursement Agreement and amounts not reimbursed remain outstanding despite the refunding. The Agency further contends the City continued to make payments to the securities market on the RDA's behalf, thus making the former RDA obligated to repay the City.

Although the refunding did not repay the City any unreimbursed amounts stemming from the 1993 Reimbursement Agreement, this fact substantiates that such amounts were necessarily not for the purpose of paying or securing the indebtedness as required by HSC section 34172(d)(2). As Finance previously notes, the 1993 Reimbursement Agreement was not executed at the time of 2003 COPs and no other amended and/or new agreements were entered at the time solely for the purpose of securing or repaying the 2003 COPs indebtedness obligation. Finance maintains its determination that the 1993 Reimbursement Agreement is unenforceable pursuant to HSC section 34171 (d) (2) as it is a city-RDA agreement which does not fit any of the listed exceptions therein.

The 1996 Reimbursement Agreements only obligated the RDA to pay "when necessary" and from "available funds." The terms of the agreements do not support a finding that the RDA's payments were for the security or payment of the 1996 COPs. Further, since the City made all the debt service payments for the 1996 COPs regardless of whether the RDA made any reimbursement payments to the City, this is further evidence that the

RDA's payments were not required for security of the indebtedness, a required feature of a contract to fit the exception in HSC section 34171(d) (2).

During the Meet and Confer, the Agency contends the 1996 Reimbursement Agreements contain mandatory reimbursement payment terms and the repayment obligation contingency on available funds, did not render it voluntary or non-existent. The Agency points to section 2 of the 1996 Reimbursement Agreements that state the RDA shall use Surplus Revenues to repay current or previously unreimbursed payments made by the City.

However, absent Surplus Revenues (if and when available), the RDA was not bound to make the reimbursements required to mandatory repayment terms, which continues to support the City did not need to rely on the RDA's payments for security or payment of the 1996 COPs. Payments made on a required frequency would have been absolutely necessary to provide the City the security or funding necessary for the City to make its obligation to pay the 1996 COPs.

Additionally, the City's Lease Agreement with ABAG Finance Corporation (ABAG) terminated in 2002, and thus the associated Reimbursement Agreements also effectively terminated in 2002. Even if the Reimbursement Agreements could be seen as security or necessary for the City's payment of the 1996 COPs (which it cannot), because the COPs are no longer outstanding, the reimbursement obligation has nothing to do with the payment or security of any indebtedness and fails to meet the requirements of the exception in HSC section 34171 (d) (2).

Finally, the Agency contends the 1996 Reimbursement Agreements did not terminate when the Lease Agreement with ABAG terminated. However, as we have noted in our determinations above, the 1996 Reimbursement Agreements are not enforceable obligations and to contend the contracts survive the lease termination is not applicable. Finance maintains its determination the 1996 Reimbursement Agreements do not meet the requirements of HSC section 34171 (d) (2).

For these reasons, the various Agreements listed as Item Nos. 6, 7, and 9 do not meet either the requirements of HSC section 34171 (d) (2) or 34191.4 (b) (2) (A). Therefore, these items are not enforceable obligations and the total requested amount of \$3,646,686 (\$3,458,410 + \$187,276 + \$1,000) in Redevelopment Property Tax Trust Fund (RPTTF) funding is not allowed.

In addition, per Finance's letter dated April 9, 2019, we continue to make the following determinations not contested by the Agency during the Meet and Confer review:

- Item No. 46 – Successor Agency Administration in the amount of \$250,000. It is our understanding the Agency requested the incorrect funding source for the Administrative Cost Allowance. Per discussion with Agency staff, the \$250,000 requested for the annual ROPS period should have been requested under the Administrative RPTTF funding source. As a result, the total ROPS 19-20 RPTTF funding has decreased by \$250,000 and the total ROPS 19-20 Administrative RPTTF has increased by \$250,000.
- Item No. 52 – Disclosure Reporting for 2016 Tax Allocation Refunding Bonds in the amount of \$2,500. It is our understanding the Agency requested the incorrect amount for continuing disclosure services. Per discussion with Agency staff and a review of documentation provided, the \$2,500 requested for the annual ROPS period should be \$4,663. As a result, the total ROPS 19-20 RPTTF funding requested has been increased by \$2,163.

- Item No. 55 – Cash Balance Correction reimbursement request in the total outstanding amount of \$155,326 is partially allowed. The Agency believes due to inaccurate reporting during the ROPS 18-19 period, Other Funding is short by \$155,326; however, our Cash Balance review only supported a shortage of \$48,828. Therefore, of the requested \$155,326, the excess \$106,498 is not eligible for RPTTF funding.

Pursuant to HSC section 34186, successor agencies are required to report differences between actual payments and past estimated obligations. Reported differences in RPTTF are used to offset current RPTTF distributions. The amount of RPTTF approved in the table on Page 5 includes the prior period adjustment resulting from the County Auditor-Controller's review of the prior period adjustment form submitted by the Agency.

The Agency's maximum approved RPTTF distribution for the reporting period is \$3,406,146 as summarized in the Approved RPTTF Distribution table on Page 5 (see Attachment).

RPTTF distributions occur biannually, one distribution for the July 1 through December 31 period (ROPS A period), and one distribution for the January 1 through June 30 period (ROPS B period) based on Finance approved amounts. Since this determination is for the entire ROPS 19-20 period, the Agency is authorized to receive up to the maximum approved RPTTF through the combined ROPS A and B period distributions.

This is our final determination regarding the obligations listed on the ROPS 19-20. This determination only applies to items when funding was requested for the 12-month period. If a denial by Finance in a previous ROPS is currently the subject of litigation, the item will continue to be denied until the matter is resolved.

The ROPS 19-20 form submitted by the Agency and this determination letter will be posted on our website:

<http://dof.ca.gov/Programs/Redevelopment/ROPS/>

This determination is effective for the ROPS 19-20 period only and should not be conclusively relied upon for future ROPS periods. All items listed on a future ROPS are subject to review and may be denied even if not denied on this ROPS or a preceding ROPS. The only exception is for items that have received a Final and Conclusive determination from Finance pursuant to HSC section 34177.5 (i). Finance's review of Final and Conclusive items is limited to confirming the scheduled payments as required by the obligation.

The amount available from the RPTTF is the same as the amount of property tax increment available prior to the enactment of redevelopment dissolution law. Therefore, as a practical matter, the ability to fund the items on the ROPS with property tax increment is limited to the amount of funding available to the Agency in the RPTTF.

Please direct inquiries to Nichelle Jackson, Supervisor, or Todd Vermillion, Lead Analyst, at (916) 322-2985.

Sincerely,



 JENNIFER WHITAKER
Program Budget Manager

cc: Ms. Rachelle Barrera, Finance, City of Chula Vista
Mr. Jon Baker, Senior Auditor and Controller Manager, San Diego County

Attachment

Approved RPTTF Distribution For the period of July 1, 2019 through June 30, 2020			
	ROPS A Period	ROPS B Period	ROPS 19-20 Total
RPTTF Requested	\$ 4,431,807	\$ 2,826,200	\$ 7,258,007
Administrative RPTTF Requested	0	0	0
Total RPTTF Requested	4,431,807	2,826,200	7,258,007
RPTTF Requested	4,431,807	2,826,200	7,258,007
<u>Adjustments</u>			
Item No. 6	(3,458,410)	0	(3,458,410)
Item No. 7	(187,276)	0	(187,276)
Item No. 9	(1,000)	0	(1,000)
Item No. 46	(250,000)	0	(250,000)
Item No. 52	2,163	0	2,163
Item No. 55	(106,498)	0	(106,498)
	(4,001,021)	0	(4,001,021)
RPTTF Authorized	430,786	2,826,200	3,256,986
Administrative RPTTF Requested	0	0	0
<u>Adjustment</u>			
Item No. 46	250,000	0	250,000
Administrative RPTTF Authorized	250,000	0	250,000
Total RPTTF Authorized for Obligations	680,786	2,826,200	3,506,986
Prior Period Adjustment	(100,840)	0	(100,840)
Total RPTTF Approved for Distribution	\$ 579,946	\$ 2,826,200	\$ 3,406,146